

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 20-mj-01072-SJB-1  
: :  
: :  
- versus - : U.S. Courthouse  
: Brooklyn, New York  
: :  
BRIAN MAIORANA, : November 10, 2020  
Defendant : 5:30 PM  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PROCEEDING  
BEFORE THE HONORABLE SANKET J. BULSARA  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**  
(TELEPHONICALLY):

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1 THE CLERK: This is Criminal Cause for  
2 Arraignment, case number 20-mj-1072, United States v.  
3 Brian Maiorana.

4 Counseling, starting with the government,  
5 please state your appearances.

6 MR. MCCONNELL: For the United States, Artie  
7 McConnell and Jonathan Algor.

8 Good evening.

9 THE COURT: Good afternoon.

10 MR. DARROW: James Darrow, Federal Defenders of  
11 New York for Mr. Maiorana, who is present by video link,  
12 your Honor.

13 THE COURT: Good afternoon. Good afternoon,  
14 Mr. Maiorana. Mr. Maiorana, I just need to confirm, can  
15 you hear me?

16 THE DEFENDANT: Yes. Yes, I can hear you.

17 THE COURT: Okay. Mr. Maiorana, the purpose of  
18 today's proceeding is to explain to you your rights, and  
19 determine what happens next in your case, but before I  
20 can do any of that, I need to confirm, do you have any  
21 trouble speaking or understanding English, sir?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Okay. Mr. Maiorana, the reason  
24 that you are here today is because you've been arrested  
25 and charged with certain crimes in a document called a

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1 complaint, and as I said, I'm going to explain to you  
2 certain rights that you have.

3 Your first right is your constitutional right  
4 to remain silent. What that means is you don't have to  
5 make a statement at any time, including to any law  
6 enforcement official. If you do make a statement,  
7 however, that statement can be used against you including  
8 in this case.

9 If you have made a statement in the past,  
10 you're under no obligation whatsoever to make a future  
11 statement.

12 Do you understand, sir, your right to remain  
13 silent?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. You also have a right to  
16 counsel, which is a right to a lawyer, and you have a  
17 right to have a lawyer to represent you from the time you  
18 were arrested through any trial, or through the  
19 conclusion of your case, including any appeal. You have  
20 a right to have a lawyer present during any questioning  
21 by law enforcement, and to represent you in court, as  
22 well as out of court.

23 You have a right to a lawyer of your own  
24 choosing, however if you could not afford a lawyer, the  
25 Court would appoint one for you, and you also have the

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1 right to represent yourself if that's what you wish to  
2 do.

3 Do you understand your right to a lawyer, sir?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: Okay. Now --

6 (Pause)

7 THE CLERK: Judge, we seem to have lost you,  
8 Judge.

9 THE COURT: No, I'm just looking for the  
10 financial affidavit of Mr. Maiorana.

11 THE CLERK: Oh, all right.

12 THE COURT: Okay.

13 THE CLERK: I will check my email --

14 THE COURT: Yep, I got it.

15 Mr. Maiorana, do you recall that you were asked  
16 some questions about your financial circumstances  
17 including your employment, and any debts?

18 THE DEFENDANT: Earlier today. Yes, sir, I --  
19 I was -- I do remember that, yes.

20 THE COURT: Okay. There's a document called a  
21 "Financial affidavit" which documents, or contains all of  
22 that information. You will, of course, receive a copy of  
23 it, as will your lawyer.

24 I need to ask at this point because it requires  
25 your signature, whether the Court has your permission to



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1 affix what amounts to an electronic signature on the  
2 document?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. The Court's review of the  
5 financial affidavit indicates that Mr. Maiorana is  
6 entitled to court-appointed counsel, and I appoint the  
7 Federal Defenders to represent him.

8 Mr. Darrow, I assume the Federal Defenders  
9 accepts the appointment?

10 MR. DARROW: Of course, your Honor.

11 THE COURT: Okay. Now Mr. Darrow, have you had  
12 an opportunity to review the complaint with your client?

13 MR. DARROW: Your Honor, I read it to him, and  
14 we discussed it. He did not have a copy of it, a  
15 physical copy at that time, but I read it to him, and  
16 we've discussed it. I'm persuaded he understands what he  
17 has been charged with.

18 THE COURT: Okay. And have you explained to  
19 him his right to an in-person initial appearance, and  
20 does he -- well, we'll start there.

21 MR. DARROW: Yes, I have, your Honor, and the  
22 defense is willing to waive his in-person appearance in  
23 light of the ongoing pandemic for his safety, and  
24 everyone else's, under the CARES Act, for that reason.

25 THE COURT: Okay. So just to confirm, your

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1 client is willing to proceed via what amounts to  
2 telephonic means for today's initial appearance?

3 MR. DARROW: Yes, your Honor.

4 THE COURT: Okay. And I will just note for the  
5 record, I can see both defense counsel, and the  
6 defendant, although they cannot see me at the current  
7 moment.

8 Okay. Mr. Maiorana, because you were charged  
9 in a document called a complaint, you have a right to  
10 what's known as a preliminary hearing. Okay? That's a  
11 hearing at which the government would have to demonstrate  
12 that there's probable cause to believe that you committed  
13 the crimes that are charged -- that you're charged with  
14 in the complaint.

15 Now at that hearing, your lawyer would have an  
16 opportunity to object to evidence that's put on by the  
17 government, either in the form of exhibits or testimony,  
18 to cross-examine any witness, and to offer argument on  
19 your behalf.

20 Now in this court, there often are not  
21 preliminary hearings for one of two reasons. One reason  
22 is, is that if the government goes to what's known as a  
23 grand jury, and obtains what's known as an indictment,  
24 then that charges you with this, or other offenses,  
25 there's no longer a right to a preliminary hearing.

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1           Second is, the defendant may choose to waive  
2 his or her preliminary hearing after discussing the  
3 matter with his counsel.

4           Do you understand your right to a hearing, sir?

5           THE DEFENDANT: Yes, your Honor.

6           THE COURT: Okay. Mr. Darrow, does your client  
7 have a position on the hearing at this point?

8           MR. DARROW: Yes, we request one, your Honor.  
9 Thank you.

10          THE COURT: Okay. Felix?

11          THE CLERK: So 30 days from today would be  
12 December 9th at 11 p.m.

13          THE COURT: I think it's 21, unless -- either  
14 21 or 14, depending on custody or not custody, so --

15          THE CLERK: Oh.

16          THE COURT: -- let's put it for 14 to start.

17          THE CLERK: 14 would be November 24th at 11  
18 a.m.?

19          THE COURT: Okay. November 24th at 11 a.m.  
20 Okay.

21          Before we proceed to bail, I'm reminding the  
22 government of its obligation under Brady. Pursuant to  
23 Federal Rule of Criminal Procedure 5(f), the government  
24 is reminded that it has an obligation under Brady v.  
25 Maryland and the cases that follow it, to disclose to the

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1 defendant all information, whether it's admissible or  
2 not, that is favorable to the defendant, material either  
3 to guilt or to punishment, and that is known to the  
4 government.

5 The government must make good faith efforts to  
6 disclose such information to the defendant as soon as  
7 reasonably possible, after its existence becomes known to  
8 the government.

9 The government's reminded that these  
10 obligations are continuing, and they apply to information  
11 whether or not it's credited. For these purposes, the  
12 government includes any federal, state, or local  
13 prosecutors, law enforcement officials, or other  
14 officials who participate in the investigation, and the  
15 prosecution of the charged offenses, and the government  
16 has an affirmative obligation to seek from these sources,  
17 all information that's subject to disclosure.

18 If the government fails to comply with its  
19 Brady obligations, it could be subject to sanctions, and  
20 it could lead to the dismissal of the charges against  
21 this defendant.

22 Mr. McConnell, do you understand these  
23 obligations, and can you confirm that you have fulfilled,  
24 or will fulfill them?

25 MR. MCCONNELL: Yes, I can.

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1 THE COURT: Okay. I will also enter a written  
2 order capturing these obligations, and that will be  
3 docketed after this proceeding. Okay.

4 What is the parties' position on bail?

5 MR. MCCONNELL: Your Honor, this is Artie  
6 McConnell for the government. It's my understanding that  
7 the defense is not making a bail application today, and  
8 will be consenting to a permanent order of detention.  
9 However, I would like to briefly expand on the record  
10 regarding why the government is seeking a permanent order  
11 of detention, as there are factors outside of the four  
12 corners of the complaint that have influenced that  
13 decision.

14 THE COURT: Before you do that, and I certainly  
15 will let you do that, and give Mr. Darrow an opportunity  
16 to respond, I just want to make sure I understand, are  
17 you seeking a permanent order of detention without leave  
18 to make a bail application in the future?

19 MR. MCCONNELL: Certainly if the defense wants  
20 to make a bail application in the future, we will hear  
21 it, and we will respond to it at that time, but --

22 THE COURT: Okay.

23 MR. MCCONNELL: -- I do think it's --

24 THE COURT: Go ahead.

25 MR. MCCONNELL: So -- thank you, your Honor.

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1           Again, as I mentioned, there are some  
2 additional factors beyond what are articulated in the  
3 complaint. The complaint makes clear that in the wake of  
4 the results of the presidential election, this defendant  
5 greatly exceeded what can be characterized as political  
6 hyperbole. He used words like "carnage",  
7 "extermination", "assassination".

8           He encouraged people to take "offensive action"  
9 in an effort to threaten to kill members of the  
10 government, including law enforcement agents, even going  
11 so far as to calling for the bombing of an FBI building,  
12 and citing the "Turner Diaries" which has been the  
13 inspiration for numerous acts of terrorism, including the  
14 1995 Oklahoma City bombing.

15           This conduct was not an aberration. There were  
16 prior postings from the same defendant on a different  
17 internet platform where he referenced his desire to make,  
18 and acquire, "weapons of war", to use his words.

19           But most importantly, your Honor, the results  
20 of a court-authorized search warrant at the defendant's  
21 residence this morning revealed that this was not simply  
22 idle chatter in the wake of the presidential election.  
23 The defendant appears to have taken steps to acquire  
24 weapons that would make it possible for him to carry out  
25 what he has stated in his violent messages.

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1 Law enforcement recovered from his home, a  
2 semiautomatic GLOCK pistol, two magazines loaded with 45  
3 caliber ammunition, additional gun parts for a 22 caliber  
4 firearm, and 22 caliber ammunition, and firearm-related  
5 accessories, such as holsters and magazine holders.

6 Now given the fact that the defendant has a  
7 felony conviction for a sex crime in Pennsylvania, and is  
8 a registered sex offender here in New York, the defendant  
9 was no doubt aware that he was prohibited from possessing  
10 any firearm and ammunition, and in addition to the  
11 charges in the complaint, the government expects to seek  
12 charges for possessing a firearm and ammunition by a  
13 convicted felon.

14 And indeed, there was additional messages where  
15 he referenced trying to obtain a Poly80 Lower, which is a  
16 reference to the upper portion of an AR-15 assault rifle.

17 Beyond that in the defendant's possession were  
18 other weapons, including an expandable baton, a pistol-  
19 style crossbow, a TASER. He was in possession of other  
20 military-style paraphernalia such as boots, and most  
21 significantly, a skull mask which is often featured  
22 prominently by far right militants in their propaganda  
23 and training materials.

24 He was also in possession of something called  
25 "The Anti-Government Movement Guidebook", and for

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1 purposes of bail, I think it's very significant that he  
2 was in possession of literature that related to obtaining  
3 citizenship in other countries, and how one could go  
4 about obtaining a foreign passport quickly.

5           So when you take all of these factors together,  
6 and you analyze them under the rubric of the Bail Reform  
7 Act, I think it's clear that the defendant is a risk of  
8 flight, and presents an irremediable threat of  
9 dangerousness to the community.

10           Regarding his flight risk, certainly the weight  
11 of the evidence in this case is overwhelming. The  
12 defendant faces a significant statutory period of  
13 incarceration for both the currently charged offense, and  
14 for any offense under 922(g) that the government would  
15 seek charge him with pursuant to a grand jury indictment,  
16 but when you consider that the defendant had a book  
17 called, "The Insider's Guide to Instant Citizenship and  
18 Second Passports", it sort of takes that hypothetical  
19 flight risk, and it makes it very real, and very acute.

20           So for those reasons, the government believes  
21 that the preponderance of the evidence shows that he is,  
22 in fact, a risk of flight, and deserves to be detained on  
23 that basis alone.

24           Regardless, it's clear from the facts that are  
25 in the complaint, and that I've outlined on the record,



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1 that the defendant is a significant danger to the  
2 community, and really no bail package would be sufficient  
3 to address that risk.

4 The Second Circuit has noted in prior cases  
5 that crimes involving the mere possession of firearms are  
6 inherently dangerous. They constitute crimes of violence  
7 for purposes of the Bail Reform Act, and that fact  
8 standing alone is significant.

9 Of course, the evidence that's uncovered during  
10 the course of the investigation has revealed that the  
11 defendant has apparently embraced some extremely violent  
12 views, some of which are described in the complaint.  
13 He's glorified acts of terrorism against politicians,  
14 protestors, and members of law enforcement, and certain  
15 religious groups, as I mentioned, and he's discussed  
16 engaging in that sort of violent conduct himself.

17 And the fact that he, knowing that he has a  
18 felony conviction, covertly purchased gun parts,  
19 ammunition and other weapons, I think needs to give the  
20 Court pause when considering his release under any  
21 circumstances, and even under the strictest of bail  
22 conditions.

23 So I understand that we don't have a package  
24 before the Court today, however, I wanted to complete the  
25 record because the government respectfully submits that

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1 there are no conditions, or combination of conditions  
2 that would assure the safety of the community, or the  
3 defendant's return to court.

4 THE COURT: Okay. Mr. Darrow?

5 MR. DARROW: Your Honor, it's true, I have no  
6 bail package to present at this time. We do expect to  
7 present one in the future, so I would only ask that the  
8 Court enter any order of detention with leave for us to  
9 do so, if we can be heard in response to the government's  
10 representations at that time.

11 THE COURT: Okay. The Court is going to enter  
12 a permanent order of detention, and as is -- and the  
13 government has indicated there's no objection to leave to  
14 file a bail application in the future, and so the  
15 defendant is granted leave.

16 The Court has an independent obligation to  
17 determine whether or not detaining the defendant is  
18 appropriate, notwithstanding any presentation by other  
19 sides, and the Court concludes that based on the charged  
20 conduct, and the proffered evidence, that the government  
21 has satisfied its burden of demonstrating that the  
22 defendant is a danger to the community, at a minimum, and  
23 also a flight risk, and justifies his detention at this  
24 point.

25 But the defendant may present a package in the

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1 future since there's no objection to that, and he can be  
2 heard at that time.

3 Okay. Is there anything else from the  
4 government?

5 MR. MCCONNELL: No, your Honor. Thank you.

6 THE COURT: Okay. Mr. Darrow, anything else?

7 MR. DARROW: Yes, your Honor. I had previously  
8 requested with notice to the government, medical  
9 attention for my client at the MDC, and you were copied  
10 on that as well, but I wanted to mention that for the  
11 record, but I did not want on the record to go into that  
12 private medical detail. So I just wanted to confirm that  
13 that application is pending before your Honor.

14 THE COURT: Okay. Does the government want to  
15 be heard on this?

16 MR. MCCONNELL: No, we have no objection to  
17 that.

18 THE COURT: Okay. I'm prepared to enter a  
19 medical order for the MDC to evaluate Mr. Maiorana's  
20 medical conditions, and provide treatment as necessary,  
21 and we will enter an order to that effect forthwith.

22 MR. DARROW: Thank you, your Honor.

23 THE COURT: Okay.

24 Anything else, Mr. Darrow?

25 MR. DARROW: Nothing from the defense at this

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1 time. Thank you.

2 THE COURT: Okay. I wish everybody good  
3 health. Have a good evening.

4 PRETRIAL SERVICES: Your Honor?

5 MR. DARROW: Thank you, your Honor.

6 MR. MCCONNELL: Thank you.

7 PRETRIAL SERVICES: Your Honor?

8 THE COURT: Yes.

9 PRETRIAL SERVICES: This is Janine Quijije from  
10 pretrial services.

11 THE COURT: Yes.

12 PRETRIAL SERVICES: I just want to state on the  
13 record, we submitted a bail recommendation, and based off  
14 what the government just disclosed, we weren't aware of  
15 that before we made our recommendation. I just want to  
16 make the record clear, that based on -- due to the  
17 newfound information, we would respectfully change our  
18 recommendation, and recommend that the defendant be  
19 detained.

20 THE COURT: Okay. Well, should -- at this  
21 point, I'm entering a permanent order of detention with  
22 leave as I've indicated. Should the defendant present a  
23 package, and if necessary for a second report, you  
24 certainly -- the Court certainly grants leave to submit a  
25 revised report that everybody can evaluate at that time,

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1 should that occur, okay?

2 PRETRIAL SERVICES: Thank you.

3 THE COURT: All right. Good night, everybody.

4 THE CLERK: Thank you.

5 MR. MCCONNELL: Thank you, your Honor.

6 MR. DARROW: Thank you.

7 (Matter Concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 13th day of November 2020.

  
Linda Ferrara

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